IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

TRC.No. 199 of 2001

TA.513/1999 OF THE SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOTTAYAM, DATED 5TH SEPTEMBER, 2000.

REVISION PETITIONER: RESPONDENT: REVENUE:

STATE OF KERALA,
REPRESENTED BY DEPUTY COMMISSIONER (LAW)
COMMERCIAL TAXES, ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER SRI.VINOD CHANDRAN

RESPONDENT: APPELLANT: ASSESSEE:

SMT.VALSA ABRAHAM,
T.K.ENTERPRISES, THAMARAPPALLIL,
PLAMPARAMBIL, KALLISSERRY,
CHENGANNUR.

BY ADV. SRI.P.RADHAKRISHNAN (1)

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 23/10/2007, ALONG WITH TRC NO. 207 OF 2001 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

T.R.C. NOS.199, 207, 210, 211, 225,

233, 325 and 332 OF 2001

Dated this the 23rdOctober, 2007

O R D E R

H.L.DATTU, C.J.

The Revenue, being aggrieved by the common order passed by the Sales Tax Appellate Tribunal, Additional Bench, Kottayam, in T.A.Nos.513 to 520 of 1999, dated 5th September, 2000, has filed these Tax Revision Cases before this Court.

2. The Revenue has raised the following questions of law for our consideration and decision. They are:

i) Is not the Tribunal in error in holding that there is no taxable turnover in the hands of the assessee exigible to tax merely placing reliance on the letters of exchange between Electricity Board and the Commissioner of Commercial Taxes?

ii) Is not on a true interpretation of the terms of the work order entered into between the assessee and the Electricity Board there exists works contract liable to be levied tax under Section 5(iv)(a) of the KGST Act?

3. The factual matrix in brief is as under. The assessee is a dealer registered under the provisions of the Kerala General Sales Tax Act ('KGST Act' for short) and the Central Sales Tax Act. The assessee is a contractor. There is an agreement between the assessee and the Kerala State Electricity Board for supply of concrete poles for which the Board has supplied cement and the iron wires.

4. The assessee had filed its annual return before the assessing authority for all these assessment years and had claimed total exemption from payment of sales tax. The assessing authority has completed the assessment proceedings and has granted total exemption to the assessee except the purchase tax liability.

5. The orders so passed by the assessing authority was taken exemption to by the revisional authority on the ground that the orders of assessment so passed are improper, irregular and prejudicial to the interest of the Revenue. A notice in this regard had been issued by the revisional authority to the assessee. After considering the objections filed by the assessee after receipt of the show cause notice, the revisional authority proceeded to modify the orders of assessment passed by the assessing authority and has come to the conclusion that the transaction between the assessee and the Electricity Board is a contract for sale. Accordingly, the revisional authority has set aside the orders of assessment passed by the assessing authority and has remanded the matter to the assessing authority for fresh consideration of the matter in accordance with law. Aggrieved by the said order passed by the revisional authority, the assessee had carried the matter before the Sales Tax Appellate Tribunal in T.A.Nos.513 to 520 of 1999.

6. The Tribunal, after going through the clauses in the agreement between the contractor/assessee and the Electricity Board, has come to

the conclusion that the supply of concrete poles by the assessee is in the nature of a works contract and, thereafter, for the purpose of quantification of the tax liability, the Tribunal has relied upon a letter said to have been addressed by a Member of the Board of Revenue to the Electricity Board, dated 10.11.1989 and has directed the assessing authority to treat the supplementary transaction between the assessee and the Electricity Board as a works contract and quantify the liability in accordance with the letter of a Member of the Board of Revenue. Aggrieved by the aforesaid direction issued by the Tribunal, the State has presented these Tax Revision Cases before us.

7. The Revenue in the Memorandum of Revision filed accepts that the supply of concrete poles made by the contractor to the Electricity Board is a works contract, but the direction issued by the Tribunal for quantification of tax liability, according to the Revenue, is contrary to the provisions of the Act and the Rules framed thereunder and also the dicta of the Apex Court in **Gannon Dunkerley & Co. and others** v. **State of Rajasthan and others** ((1993) 88 STC 204) and the subsequent decisions rendered by the Apex Court.

8. In these Tax Revision Cases, after going through the clauses in the agreement between the contractor and the Electricity Board, the Tribunal has come to the conclusion that the supply of concrete poles made by the contractor to the Electricity Board is in the nature of a works

contract and having said so, merely relying on a letter said to have written by a Member of the Board of Revenue, the Tribunal has directed the assessing authority to compute the tax liability only in accordance with what has been stated in that letter.

9. The letter is not in the nature of a clarification. If it is a clarification, it requires to be issued by the Board of Revenue under Section 3(4) of the Act. The letter of a Member of the Board of Revenue cannot have the status of a clarification issued under sub-section (4) of Section 3 of the Act. Further, the letter of a Member of the Board of Revenue is not binding on the Tribunal. In our opinion, merely relying upon the correspondence between a Member of the Board of Revenue with the Electricity Board, the Tribunal could not have directed the assessing authority to compute the tax liability in a particular manner. In our opinion, while holding that the supply of concrete poles made by the contractor to the Electricity Board is a works contract, the Tribunal should have directed the assessing authority to compute the tax liability in accordance with the provisions of the KGST Act read with the Kerala General Sales Tax Rules, 1963. Since this is not done by the Tribunal, in our opinion, the latter portion of the order passed by the Tribunal requires modification. Accordingly, we pass the following:

O R D E R

i) All these Tax Revision Cases are allowed in part.

ii) The direction issued by the Tribunal to the assessing authority to quantify the tax liability in accordance with the letter of a Member of the Board of Revenue to the Electricity Board is set aside.

iii) Now a direction is issued to the assessing authority to quantify the tax liability of the contractor keeping in view that the supply of concrete poles by the contractor to the Electricity Board is a works contract and then proceed to quantify the tax liability as provided under the charging provisions read with the Rules therein. While doing so, the assessing authority shall also keep in view the observations made by the Apex Court in the case of **Gannon Dunkerley & Co. and others** v. **State of Rajasthan and others** ((1993) 88 STC 204).

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/DK

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

T.R.C.NOS.199, 207, 210, 211, 225, 233, 325 & 332 OF 2001

O R D E R

23rd October, 2007